

PRESIDING OFFICER'S
RULING NO. R97-1/21

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

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Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULING CONCERNING
POPKIN INTERROGATORIES

(September 18, 1997)

This ruling denies the Motion of the United States Postal Service for Leave to be Excused from Responding to Popkin Interrogatories DBP/USPS-1-68, (Motion) filed September 15, 1997. The Postal Service is given an additional seven days from the date of this ruling to interpose valid objections, or 10 days from the date of this ruling to provide responsive answers to these interrogatories.

This ruling also denies Popkin's request that he be allowed to file any follow-up interrogatories and/or motions to compel concerning his interrogatories in a single document on the last day any such request would be due under the rules. Institutional Interrogatories of David B. Popkin to the United States Postal Service and Motion to File all Followup Interrogatories/Motions to Compel in a Single Pleading (Request), September 8, 1997 at 1.

The Motion states that on September 10, 1997 the Postal Service received more than 60 pages of multi-part interrogatories from intervenor Popkin. The Motion acknowledges that many sub-parts of some of these questions may be requesting information that is both relevant and material in this case. However, the Service contends that other sub-parts are neither relevant nor material to the issues before the Commission, and that the sheer volume of Popkin's request makes it impossible for the

Postal Service to cope with the logistics of obtaining answers from appropriate witnesses or from identifying applicable objections in a timely fashion. The Motion requests that Popkin be directed to limit the volume of his requests, direct requests to appropriate Postal Service witnesses, and to divide questions so that they can be more easily dealt with by the Postal Service.

The Postal Service Motion and the Popkin Request bring to the fore problems associated with the conduct of postal rate proceedings under strict statutory deadlines. A primary purpose of this Commission is to provide an open public forum. However, individuals participating in these cases may find that the procedures necessary to achieve expedition increase the cost of participation. It appears that Popkin prepared and served his discovery in a manner calculated to minimize his costs. This impression is consistent with his Request that he be allowed to cumulate multiple submissions for simultaneous filing and service.

The Commission is sensitive to the benefits of making its proceedings easily accessible to all types of mailers, including individuals such as Popkin. If rate cases were not subject to tight statutory deadlines, it might be feasible to allow more time for discovery, more time to prepare pleadings, and more leeway in adherence to procedural deadlines. Unfortunately, the applicable statutory 10-month time limit make it imperative that participants adhere to those deadlines established in the rules of practice and special rules of practice. Thus, with regard to Popkin's Request, I will not grant a blanket extension for filings until the last date when any follow-up interrogatory or motion to compel would be due. I remind Popkin, and other parties, that it is quite permissible to file pleadings before the final due date, so it is probable that frequently several separate pleadings can be filed and served together.

The Postal Service motion suggests that Popkin has not fully and carefully considered how to pose questions in a manner which would facilitate Postal Service responses. It contends that Popkin is under an obligation to restrict discovery to topics germane to issues likely to be dispositive of matters the Commission will address and resolve in developing its recommendations. The Service does not dispute that some of

the questions posed by Popkin are proper discovery requests, but it contends that it should not be responsible for reviewing the "morass of questions submitted by Mr. Popkin on September 8 in order to separate the wheat from the chaff." Motion at 4.

I am sympathetic to the workload imposed upon counsel by postal rate cases. Furthermore, I recognize that as Presiding Officer, I must take care to assure that Commission procedures not be used to abuse or intimidate other participants. However, I can not absolve the Postal Service from its obligation to answer or object to discovery simply because the Service pleads that there are too many questions, some of which may be improper. The Postal Service does not allege that Popkin's purpose is to prevent the Postal Service from participating in this case, nor is there any indication that Popkin seeks to cause the Service to incur significant and unreasonable expenses.¹ Under these circumstances, it is incumbent on counsel to take steps other than applying directly to the Presiding Officer for a blanket "general exemption". The Postal Service could discuss with Popkin ways to ease its obligations. Alternatively, it could request additional time to answer or object to a portion of this discovery. Other solutions may be available as well.²

A reasonable attempt to respond promptly to Popkin's legitimate inquiries is required. The Service implies that some of these interrogatories seek information readily available in its filing. However, it offers no examples, and thus this contention can be given little weight. By submitting a large number of requests on a single day, Popkin has given the Postal Service a difficult task of preparing a large number of

¹ The burden imposed by Popkin's 68 interrogatories is not unprecedented. In Docket No. R90-1R, on March 22, 1994, the Postal Service and Mail Order Association of America et al. together submitted 79 interrogatories (many of which included several subparts) addressed to a single individual, Presiding Officer's witness Sowell. One hundred and forty-two pages of responses were timely filed within 14 days.

² On numerous occasions the Postal Service has requested and been granted extensions for filing documents when various factors led to missed deadlines. See for example P.O. Rulings R97-1/6, 9, 10, 14, 15, 18, and 19.

answers or objections within a limited period of time. However, the Postal Service consistently attempts to avoid releasing studies or surveys prepared for use in a rate case prior to filing its request. This practice may be defensible as litigation strategy, but it results in interested persons having to review vast amounts of technical information concerning diverse aspects of a Postal Service request in a very limited period of time. Postal Service complaints that participant discovery should be directed with more specificity to individual witnesses, and should avoid requesting information provided somewhere in testimony or library references, would be more appealing if the Service attempted to make significant amounts of relevant information readily available prior to filing its request.³ Such a practice would be particularly helpful in cases such as this, in which the Service proposes multiple new technical costing and pricing practices.

In framing subsequent pleadings counsel should have in mind that the Commission is charged by Congress with recommending rates and classifications for the Postal Service. Rate proceedings are not a forum for general oversight of Postal Service operating practices. While the quality of service received by mailers is relevant, argument about the wisdom of particular operating procedures that may have an impact on service is not a fertile area.

RULING


1. The Motion of the United States Postal Service for Leave to be Excused from Responding to Popkin Interrogatories DBP/USPS-1-68, filed September 15, 1997, is denied.

2. The Postal Service shall have seven days from the date of this ruling to interpose valid objections, or 10 days from the date of this ruling to provide responsive

³ Interrogatory DBP/USPS-3 indicates that Popkin was interested in obtaining information from the Service before it filed its request. Perhaps the Service's attempts to prevent this contributed to Popkin having such a large number of questions now that the case is underway.

answers to the Institutional Interrogatories of David B. Popkin, filed September 10, 1997.

3. The David B. Popkin Motion to File All Followup Interrogatories/Motions to Compel in a Single Pleading, filed September 10, 1997, is denied.


Edward J. Gleiman
Presiding Officer